

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1336*

Short Title: 1998 Gov. DWI Amendments.

(Public)

Sponsors: Senators Odom, Forrester; Blust, Jenkins, McDaniel, and Phillips.

Referred to: Judiciary.

May 27, 1998

A BILL TO BE ENTITLED

1 AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S
2 DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL
3 OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND
4 OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR
5 COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL
6 ACTIVITY BUSES AND CHILD CARE VEHICLES, AND TO PROVIDE FOR
7 IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL
8 PERSONS UNDER 21 YEARS OF AGE; AND TO ELIMINATE THE
9 INFRACTION TREATMENT OF PURCHASE OR POSSESSION OF
10 ALCOHOLIC BEVERAGES BY A 19 OR 20 YEAR OLD AND TO MAKE
11 CONFORMING CHANGES.
12

13 The General Assembly of North Carolina enacts:

14 PART I. DWI FORFEITURE REVISIONS.

15 Section 1. G.S. 20-4.01(24a) reads as rewritten:

16 "(24a) Offense Involving Impaired Driving. – Any of the following offenses:

- 17 a. Impaired driving under G.S. 20-138.1.
18 b. Death by vehicle under G.S. 20-141.4 when conviction is based
19 upon impaired driving or a substantially equivalent offense under
20 previous law.

- 1 c. ~~Second~~ First or second degree murder under G.S. 14-17 or
2 involuntary manslaughter under G.S. 14-18 when conviction is
3 based upon impaired driving or a substantially equivalent offense
4 under previous law.
- 5 d. An offense committed in another jurisdiction substantially
6 equivalent to the offenses in subparagraphs a through c.
- 7 e. A repealed or superseded offense substantially equivalent to
8 impaired driving, including offenses under former G.S. 20-138 or
9 G.S. 20-139.
- 10 f. Impaired driving in a commercial motor vehicle under G.S. 20-
11 138.2, except that convictions of impaired driving under G.S. 20-
12 138.1 and G.S. 20-138.2 arising out of the same transaction shall
13 be considered a single conviction of an offense involving
14 impaired driving for any purpose under this Chapter.
- 15 g. Habitual impaired driving under G.S. 20-138.5.
16 A conviction under former G.S. 20-140(c) is not an offense
17 involving impaired driving."

18 Section 2. G.S. 20-28.2 reads as rewritten:

19 **"§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving**
20 **license revocation.**

21 (a) Meaning of "Impaired Driving License Revocation". – The revocation of a
22 person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation
23 is pursuant to:

24 (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12),
25 ~~or 20-17.2; 20-17.2, or 20-138.5;~~ or

26 (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-
27 17(a)(11), if the offense involves impaired driving.

28 (a1) ~~[Definitions.]~~ Definitions. – As used in this section and in G.S. 20-28.3, 20-
29 28.4, 20-28.5, ~~and 20-28.6, 20-28.7, 20-28.8, and 20-28.9,~~ the following terms mean:

30 (1) Acknowledgment. – A written document acknowledging that:

- 31 a. The motor vehicle was operated by a person charged with an
32 offense involving impaired driving while that person's drivers
33 license was revoked as a result of a prior impaired drivers license
34 revocation;
- 35 b. If the motor vehicle is again operated by this particular person, at
36 any time while that person's drivers license is revoked, and the
37 person is charged with an offense involving impaired driving, the
38 motor vehicle is subject to impoundment and forfeiture; and
- 39 c. A lack of knowledge or consent to the operation will not be a
40 defense in the future, unless the motor vehicle owner has taken
41 all reasonable precautions to prevent the use of the motor vehicle
42 by this particular person and immediately reports, upon

- 1 discovery, any unauthorized use to the appropriate law
2 enforcement agency.
- 3 (1a) Fair market value. – The value of the seized motor vehicle, as
4 determined in accordance with the schedule of values adopted by the
5 Commissioner pursuant to G.S. 105-187.3.
- 6 (2) Innocent Partyowner. – A motor vehicle owner who:
7 a. Did not know and had no reason to know that the
8 defendant's drivers license was revoked;
9 b. Knew that the defendant's drivers license was revoked, but the
10 defendant drove the vehicle without the person's expressed or
11 implied permission;
12 c. Whose vehicle was stolen;
13 d. Who files a police report for unauthorized use of the motor
14 vehicle and agrees to prosecute the unauthorized operator of the
15 motor vehicle; or
16 e. Who is in the business of renting vehicles, the driver is not listed
17 as an authorized driver on the rental contract and the owner
18 agrees to prosecute for unauthorized use of the motor vehicle.
- 19 (2a) Insurance company. – Any insurance company that has coverage on or
20 is otherwise liable for repairs or damages to the motor vehicle at the
21 time of the seizure.
- 22 (2b) Insurance proceeds. – Proceeds paid under an insurance policy for
23 damage to a seized motor vehicle less any payments actually paid to
24 valid lienholders and for towing and storage costs incurred for the motor
25 vehicle after the time the motor vehicle became subject to seizure.
- 26 (3) Lienholder. – A person who holds a perfected security interest in a
27 motor vehicle at the time of seizure.
- 28 (3a) Motor vehicle owner. – A person in whose name a registration card or
29 certificate of title for a motor vehicle is issued at the time of seizure.
- 30 (4) Order of Forfeiture. – An order by the court which terminates the rights
31 and ownership interest of a motor vehicle owner in a motor vehicle and
32 any insurance proceeds or proceeds of sale in accordance with G.S. 20-
33 28.2.
- 34 (5) Possessory Lien. – A lien for all costs and fees associated with the
35 towing, storage, or sale of a vehicle pursuant to this section. This lien
36 shall have priority over perfected and unperfected security interests.
37 Storage fees subject to this lien shall not exceed five dollars (\$5.00) per
38 day.
- 39 (6) Registered Owner. – A person in whose name a registration card for a
40 motor vehicle is issued at the time of seizure.
- 41 (7) Vehicle Owner. – A person in whose name a registration card or
42 certificate of title for a motor vehicle is issued.

1 (b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. – If at
2 a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5~~ the judge determines
3 ~~that the grossly aggravating factor described in G.S. 20-179(e)(2) applies,~~ for the
4 underlying offense involving impaired driving, at a separate hearing after conviction of
5 the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to
6 appear at the scheduled trial for the underlying offense and the defendant's trial has not
7 been rescheduled, the judge determines by the greater weight of the evidence that the
8 defendant is guilty of an offense involving impaired driving and that the defendant's
9 license was revoked pursuant to an impaired driving license revocation as defined in
10 subsection (a) of this section, the motor vehicle that was driven by the defendant at the
11 time the defendant committed the offense of ~~impaired driving~~ becomes property subject
12 to an order of forfeiture.

13 (c) Duty of Prosecutor to Notify Possible Innocent Parties. – In any case in which
14 a prosecutor determines that a motor vehicle driven by a defendant may be subject to
15 forfeiture under this ~~section,~~ section and the motor vehicle has not been permanently
16 released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant
17 owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the
18 prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also~~
19 determine if there are any lienholders noted on the vehicle's certificate of title. The State
20 shall notify the defendant, each motor vehicle owner, and each lienholder that the motor
21 vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the
22 lienholder may intervene to protect that person's interest. The notice may be served by
23 any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~
24 10 days before the hearing at which an order of forfeiture may be entered.

25 (c1) Motor Vehicles Involved in Accidents. – If a motor vehicle subject to
26 forfeiture was damaged while the defendant operator was committing the underlying
27 offense involving impaired driving, or was damaged incident to the seizure of the motor
28 vehicle, the Division shall determine the name of any insurance companies that are the
29 insurers of record with the Division for the motor vehicle at the time of the seizure or that
30 may otherwise be liable for repair to the motor vehicle. In any case where a seized motor
31 vehicle was involved in an accident, the Division shall notify the insurance companies
32 that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid
33 to the clerk of superior court of the county where the motor vehicle was seized to be held
34 and disbursed pursuant to the further orders of the court. Any insurance company that
35 receives written or other actual notice of seizure pursuant to this section shall not be
36 relieved of any legal obligation under any contract of insurance unless the claim for
37 property damage to the seized motor vehicle minus the policy owner's deductible is paid
38 directly to the clerk of court. The insurance company paying insurance proceeds to the
39 clerk of court pursuant to this section shall be immune from suit by the motor vehicle
40 owner for any damages alleged to have occurred as a result of the motor vehicle seizure.
41 The proceeds shall be held by the clerk. If the motor vehicle is ordered forfeited, the
42 clerk shall pay the insurance proceeds to the county school fund.

1 (d) ~~Duty of Judge-Forfeiture Hearing.~~ ~~—The trial judge~~ Unless a motor vehicle that
2 has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent
3 owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or
4 to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the
5 forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the
6 operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the
7 vehicle is subject to forfeiture under this section. underlying offense involving impaired
8 driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture
9 hearing held not less than 60 days after the defendant failed to appear at the scheduled
10 trial for the underlying offense and the defendant's trial has not been rescheduled. If at
11 the sentencing hearing, or at a subsequent forfeiture hearing, the judge determines that
12 the requirements of subsections (a) through (c) of this section exist and the defendant was
13 the only motor vehicle owner at the time of the offense, motor vehicle is subject to
14 forfeiture pursuant to this section and proper notice of the hearing has been given, the
15 judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a
16 subsequent forfeiture hearing, the judge determines that the requirements of subsections
17 (a) through (c) of this section exist and the defendant was not the only vehicle owner at
18 the time of the offense, motor vehicle is subject to forfeiture pursuant to this section and
19 proper notice of the hearing has been given, the judge shall order the motor vehicle
20 forfeited unless another motor vehicle owner establishes, by the greater weight of the
21 evidence, that such motor vehicle owner is an innocent party owner as defined by
22 subdivision (a1)(2) of in this section, in which case the trial judge shall order the motor
23 vehicle released to the innocent party vehicle owner pursuant to the provisions of
24 subsection (e) of this section. In any case where the motor vehicle is ordered forfeited,
25 the judge shall either:

- 26 (1) ~~Authorize the school-county board of education to sell the motor~~
27 ~~vehicle at public sale or retain the motor vehicle for its own use~~
28 ~~pursuant to G.S. 20-28.5; or~~
29 (2) ~~Release~~ Order the motor vehicle released to an intervening lienholder
30 pursuant to the provisions of subsection (g)-(f) of this section. ~~section;~~
31 (3) Order the proceeds of sale or insurance proceeds be disbursed to the
32 county board of education; or
33 (4) Order the insurance claim to be assigned to the county board of
34 education in the event the motor vehicle has been damaged in an
35 accident incident to the seizure of the motor vehicle.

36 ~~If the judge determines that the requirements of subsection (a) and (b) of this section exist~~
37 ~~motor vehicle is subject to forfeiture pursuant to this section, but that notice as required~~
38 ~~by subsection (c) has not been given, the judge shall continue the forfeiture proceeding~~
39 ~~until adequate notice has been given. In no circumstance shall the sentencing of the~~
40 ~~defendant be delayed as a result of the failure of the prosecutor to give adequate notice.~~

41 (e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. ~~— If a~~
42 ~~nondefendant vehicle owner establishes by the greater weight of the evidence that: (i) the~~
43 ~~motor vehicle was being driven by a person who was not the only motor vehicle owner at~~

1 the time of the underlying offense and (ii) ~~that the petitioner~~ is an "~~innocent party~~",
2 "innocent owner", as defined by this section, a judge shall order the motor vehicle
3 returned-released to the-that owner-owner, conditioned upon payment of all towing and
4 storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

5 ~~This release~~ Release to a nondefendant vehicle owner shall only be ordered upon
6 satisfactory proof of:

- 7 (1) The identity of the person as a motor vehicle owner;
- 8 (2) The existence of financial responsibility to the extent required by
9 Article 13 of this Chapter; and
- 10 (3) ~~The payment of towing and storage fees; fees, except in the case of~~
11 ~~release to an innocent vehicle owner; and~~
- 12 (4) The execution of an acknowledgment as defined in subdivision (a1)(1)
13 of this section.

14 No motor vehicle subject to forfeiture under this section shall be released to a
15 nondefendant motor vehicle owner if the records of the Division indicate the motor
16 vehicle owner had previously signed an acknowledgment, as required by this section, and
17 the same person was operating the motor vehicle while that person's license was revoked
18 unless the ~~innocent~~ nondefendant motor vehicle owner shows by the greater weight of the
19 evidence that the motor vehicle owner has taken all reasonable precautions to prevent the
20 use of the motor vehicle by this particular person and immediately reports, upon
21 discovery, any unauthorized use to the appropriate law enforcement agency. A
22 determination by the court at the forfeiture hearing held pursuant to subsection (d) of this
23 section that the petitioner is not an innocent owner is a final judgment and is immediately
24 appealable to the Court of Appeals.

25 (f) Release to Lienholder. – The trial judge shall order a forfeited motor vehicle
26 released to the lienholder upon payment of all towing and storage charges incurred as a
27 result of the seizure of the motor vehicle if the judge determines, by the greater weight of
28 the evidence, that:

- 29 (1) The lienholder's interest is equal to or greater than the fair market value
30 of the ~~vehicle;~~ motor vehicle, less any accumulated towing and storage
31 costs;
- 32 (2) The lienholder agrees not to sell, give, or otherwise transfer possession
33 of the forfeited motor vehicle to the defendant or to the motor vehicle
34 owner who owned the motor vehicle immediately prior to forfeiture, or
35 any person acting on the defendant's or motor vehicle owner's behalf;
36 and
- 37 (3) The forfeited motor vehicle had not previously been released to the
38 lienholder; and lienholder.
- 39 (4) ~~The lienholder pays, in full, any towing and storage costs incurred as a~~
40 ~~result of the seizure of the vehicle.~~

41 A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle
42 to the defendant, the vehicle owner who owned the motor vehicle immediately prior to

1 forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner
2 shall not be liable for damages arising out of such refusal.

3 (g) ~~Possessory Lien. — The entity that tows or stores the motor vehicle, other than~~
4 ~~the county school board, shall be entitled to a possessory lien as defined in G.S.~~
5 ~~28.2(a1)(5)."~~

6 Section 3. G.S. 20-28.3 reads as rewritten:

7 "**§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses**
8 **involving impaired driving while license revoked.**

9 (a) ~~[Vehicles Subject to Seizure.]~~Motor Vehicles Subject to Seizure. – A motor
10 vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 who is
11 charged with an offense involving impaired driving is subject to seizure if at the time of
12 the violation the drivers license of the person driving the motor vehicle was revoked as a
13 result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

14 (b) Duty of Officer. – If the charging officer has probable cause to believe that a
15 motor vehicle driven by the defendant may be subject to forfeiture under this section, the
16 officer shall seize the motor vehicle and have it impounded. If the officer determines
17 prior to seizure that the motor vehicle had been reported stolen or that the motor vehicle
18 was a rental vehicle driven by a person not listed as an authorized driver on the rental
19 contract, the officer shall not seize the motor vehicle. Probable cause may be based on
20 the officer's personal knowledge, reliable information conveyed by another officer,
21 records of the Division, or other reliable source. ~~The officer shall cause to be issued~~
22 ~~written notification of impoundment to any vehicle owner who was not operating or~~
23 ~~present in the vehicle at the time of the offense. This notice shall be sent by first class~~
24 ~~mail to the most recent address contained in the Division records. This written~~
25 ~~notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall~~
26 ~~state the reason for the impoundment and the procedure for requesting release of the~~
27 ~~vehicle. The seizing officer shall notify the Division and the agency designated under~~
28 ~~subsection (b1) of this section of the seizure in accordance with procedures established~~
29 ~~by the Division. Division and the agency designated under subsection (b1) of this section.~~
30 ~~Within~~In any case in which the officer seizes the motor vehicle, the officer shall, within
31 72 hours of the seizure of the vehicle the officer shall also cause notice of the
32 impoundment and intent to forfeit the vehicle to be given to any lienholder of record with
33 the Division. motor vehicle, give notice to the clerk of superior court who shall provide
34 copies to the district attorney and the attorney for the county board of education.

35 (b1) Notification of Impoundment. – Within 48 hours of receipt of the notice of
36 seizure, an agency designated by the Governor shall issue written notification of
37 impoundment to any lienholder of record and to any motor vehicle owner who was not
38 operating the motor vehicle at the time of the offense. This notice shall be sent by first-
39 class mail to the most recent address contained in the Division's records. If the motor
40 vehicle is registered in another state, notice shall be sent to the address shown on the
41 records of the state where the motor vehicle is registered. This written notification shall
42 provide notice that the motor vehicle has been seized, state the reason for the seizure and
43 the procedure for requesting release of the motor vehicle. Additionally, if the motor

1 vehicle was damaged while the defendant operator was committing an offense involving
2 impaired driving or incident to the seizure, the agency shall issue written notification of
3 the seizure to the owner's insurance company of record and to any other insurance
4 companies that may be insuring other motor vehicles involved in the accident. The
5 Division shall prohibit title to a seized motor vehicle from being transferred by a motor
6 vehicle owner unless authorized by court order.

7 (c) Review by Magistrate. – Upon seizing~~determining~~ that there is probable cause
8 for seizing a motor vehicle, the seizing officer shall present to a magistrate within the
9 county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment
10 setting forth the basis upon which the motor vehicle has been or will be seized for
11 forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate
12 determines the requirements of this section have been met, shall order the motor vehicle
13 held. The magistrate may request additional information and may hear from the ~~operator~~
14 defendant if the ~~operator~~ defendant is present. If the magistrate determines the
15 requirements of this section have not been met, the magistrate shall order the motor
16 vehicle released to a motor vehicle owner upon payment of towing and storage fees. If
17 the motor vehicle has not yet been seized, and the magistrate determines that seizure is
18 appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The
19 magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk
20 shall provide copies of the order of seizure to the district attorney and the attorney for the
21 county board of education.

22 (c1) Effecting an Order of Seizure. – An order of seizure shall be valid anywhere in
23 the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction
24 for violations of Chapter 20 of the General Statutes, may use such force as may be
25 reasonable to seize the motor vehicle and to enter upon the property of the defendant to
26 accomplish the seizure. An officer who has probable cause to believe the motor vehicle
27 is concealed or stored on private property of a person other than the defendant may obtain
28 a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

29 (d) Custody of Motor Vehicle. –~~The~~ Unless a State agency through a statewide or
30 regional contract, or in the absence of a statewide or regional contract, the county board
31 of education, has contractually provided for towing by another procedure, the seized
32 motor vehicle shall be towed by a commercial towing company designated by the law
33 enforcement agency that seized the motor vehicle. ~~to a location designated by the county~~
34 ~~school board for the county in which the operator of the vehicle is charged and~~ If either a
35 statewide or regional contractor, or the county board of education, in the absence of a
36 statewide or regional contract, chooses to contract for local towing services, all towing
37 companies on the towing list for each law enforcement agency with jurisdiction within
38 the county shall be given written notice and an opportunity to submit proposals prior to a
39 contract for local towing services being awarded. Upon seizure, the motor vehicle is
40 ~~placed~~ under the constructive possession of the ~~school board~~ county board of education
41 for the county in which the operator of the vehicle is charged pending release or sale.
42 ~~Each~~ Absent a statewide or regional contract that provides otherwise, each county ~~school~~
43 ~~board~~ board of education may elect to have seized motor vehicles stored on property

1 owned or leased by the ~~school~~county board of education and charge ~~no~~a reasonable fee
2 for ~~storage~~storage, not to exceed ten dollars (\$10.00) per day. In the alternative, the
3 county ~~school board~~board of education may contract with a commercial towing and
4 storage facility or other private entity for the ~~storage~~towing, storage and disposal of
5 seized motor vehicles, and a storage fee of not more than ~~five~~ten dollars ~~(\$5.00)~~(\$10.00)
6 per day may be charged. Except for gross negligence or intentional misconduct, the
7 county board of education, or any of its employees, shall not be liable to the owner or
8 lienholder for damage to or loss of the motor vehicle or its contents during the time the
9 motor vehicle is being towed or stored pursuant to this subsection.

10 (e) Release of Motor Vehicle Pending Trial. – A motor vehicle owner, or a
11 lienholder of a motor vehicle, other than the driver at the time of the underlying offense
12 resulting in the seizure, may apply to the clerk of superior court in the county where the
13 charges are pending for pretrial release of the motor vehicle.

14 The clerk shall release the motor vehicle to a ~~qualified~~nondefendant motor vehicle
15 owner or a lienholder conditioned upon payment of all towing and storage charges
16 incurred as a result of seizure and impoundment of the motor vehicle under the following
17 conditions:

- 18 (1) The motor vehicle has been ~~stored~~seized for not less than 24 hours;
- 19 (2) ~~All towing and storage charges have been paid;~~
- 20 (3) Execution of a good and valid property bond, bail bond, or bond with
21 sufficient ~~sureties~~sureties, in an amount equal to twice ~~the value of the~~
22 ~~seized vehicle, as determined in accordance with the schedule of values~~
23 ~~adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-~~
24 ~~187.3, the fair market value of the motor vehicle as defined by G.S. 20-~~
25 ~~28.2, payable to the county school fund and conditioned on return of the~~
26 motor vehicle, in substantially the same condition as it was at the time
27 of seizure and without any new or additional liens or encumbrances, on
28 the day of trial of the operator; the forfeiture hearing as noticed by the
29 district attorney under G.S. 20-28.2(c);
- 30 (4) If a ~~qualified~~nondefendant motor vehicle owner, execution of an
31 acknowledgment as described in G.S. 20-28.2(a1); ~~and~~
- 32 (5) A check of the records of the Division indicates that the requesting
33 motor vehicle owner has not previously executed an acknowledgment
34 naming the operator of the seized ~~vehicle~~motor vehicle;
- 35 (6) A bond posted to secure the release of this motor vehicle under this
36 subsection has not been previously ordered forfeited under G.S. 20-28.5.
- 37 (7) If a lienholder, execution of a written agreement not to sell, give, or
38 otherwise transfer possession of the forfeited motor vehicle to the motor
39 vehicle owner who owned the motor vehicle immediately prior to
40 seizure, or any person acting on the motor vehicle owner's behalf. A
41 lienholder who refuses to sell, give, or transfer possession of a forfeited
42 motor vehicle to the defendant, the motor vehicle owner who owned the
43 motor vehicle immediately prior to forfeiture, or any person acting on

1 the behalf of the defendant or motor vehicle owner shall not be held
2 liable for damages arising out of such refusal.

3 In the event a nondefendant motor vehicle owner or lienholder who obtains temporary
4 possession of a seized motor vehicle pursuant to this subsection does not return the motor
5 vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S.
6 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor
7 vehicle as set forth in this subsection, or the bond posted shall be ordered forfeited and an
8 order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle
9 owner or lienholder who willfully violates any condition of pretrial release may be held
10 in civil or criminal contempt.

11 (e1) Pretrial Release of Motor Vehicle to Innocent Owner. – A nondefendant motor
12 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
13 that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge
14 for a hearing pursuant to G.S. 20-28.2(e), to be held within 10 business days or as soon as
15 thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the
16 district attorney, and the attorney for the county board of education. The clerk shall
17 forward a copy of the petition to the district attorney for the district attorney's review. If,
18 based on the available evidence of record, the district attorney determines that the
19 petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the
20 district attorney may authorize the clerk of court to issue an order releasing the motor
21 vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e)
22 and no hearing shall be held. The clerk shall send a copy of the order of release to the
23 county board of education attorney. At any pretrial hearing conducted pursuant to this
24 subsection, the court is not required to determine the issue of forfeiture, only the issue of
25 whether the petitioner is an innocent owner. Accordingly, the State shall not be required
26 to prove the underlying offense of impaired driving or the existence of a prior drivers
27 license revocation. An order issued under this subsection finding that the petitioner failed
28 to establish that the petitioner is an innocent owner may be reconsidered by the court as
29 part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

30 (e2) Pretrial Release of Motor Vehicle to Defendant Owner. – A defendant motor
31 vehicle owner may file a petition with the clerk of court seeking a pretrial determination
32 that the defendant's license was not revoked pursuant to an impaired driving license
33 revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a
34 judge for a hearing pursuant to G.S. 20-28.4(d)(2), to be held within 10 business days or
35 as soon as thereafter as may be feasible. Notice of the hearing shall be given to the
36 defendant, the district attorney, and the attorney for the county board of education. The
37 clerk shall forward a copy of the petition to the district attorney for the district attorney's
38 review. If, based on the available evidence of record, the district attorney determines that
39 the defendant's motor vehicle is not subject to forfeiture, the district attorney may
40 authorize the clerk of court to issue an order releasing the motor vehicle to the defendant
41 upon payment of all towing and storage charges incurred as a result of the seizure and
42 impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the
43 defendant as a motor vehicle owner and the existence of financial responsibility to the

1 extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk
2 shall send a copy of the order of release to the attorney for the county board of education.
3 At any pretrial hearing conducted pursuant to this subsection, the court is not required to
4 determine the issue of the underlying offense of impaired driving only the existence of a
5 prior drivers license revocation as an impaired driving license revocation. Accordingly,
6 the State shall not be required to prove the underlying offense of impaired driving. An
7 order issued under this subsection finding that the defendant failed to establish that the
8 defendant's license was not revoked pursuant to an impaired driving license revocation as
9 defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture
10 hearing conducted pursuant to G.S. 20-28.2(d).

11 (e3) Pretrial Release of Motor Vehicle to Lienholder. – A lienholder may file a
12 petition with the clerk of court requesting the court to order pretrial release of a seized
13 motor vehicle. The lienholder shall serve a copy of the petition on all interested parties
14 which shall include the registered owner, the titled owner, the district attorney and the
15 county board of education attorney. Upon 10 days' prior notice of the date, time, and
16 location of the hearing sent by the lienholder to all interested parties, a judge, after a
17 hearing, shall order a seized motor vehicle released to the lienholder conditioned upon
18 payment of all towing and storage costs incurred as a result of the seizure and
19 impoundment of the motor vehicle if the judge determines, by the greater weight of the
20 evidence, that:

- 21 (1) Default on the obligation secured by the motor vehicle has occurred;
- 22 (2) As a consequence of default, the lienholder is entitled to possession of
23 the motor vehicle;
- 24 (3) The lienholder's interest is equal to or greater than the fair market value
25 of the motor vehicle, less any accumulated towing and storage costs;
- 26 (4) The lienholder agrees not to sell, give, or otherwise transfer possession
27 of the forfeited motor vehicle to the motor vehicle owner; and
- 28 (5) The forfeited motor vehicle had not previously been released to the
29 lienholder.

30 The clerk of superior court may order a seized vehicle released to the lienholder
31 conditioned upon payment of all towing and storage costs incurred as a result of the
32 seizure and impoundment of the motor vehicle at any time when all interested parties
33 have, in writing, waived any rights that they may have to notice and a hearing, and the
34 lienholder has agreed to the provision of subdivision (4) above. A lienholder who
35 refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant,
36 the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or
37 any person acting on the behalf of the defendant or the motor vehicle owner shall not be
38 liable for damages arising out of such refusal. However, any subsequent violation of the
39 conditions of release by the lienholder shall be punishable by civil or criminal contempt.

40 (f) Duty of Trial Judge. ~~The trial judge at the sentencing hearing on the~~
41 ~~operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the~~
42 ~~vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

1 ~~(g) Possessory Lien.~~— The entity that tows and stores the vehicle, other than the
2 county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).

3 (h) Insurance Proceeds. – In the event a motor vehicle is damaged incident to the
4 conduct of the defendant which gave rise to the defendant's arrest and seizure of the
5 motor vehicle pursuant to this section, the county board of education, or its authorized
6 designee, is authorized to negotiate the county board of education's interest with the
7 insurance company and to compromise and accept settlement of any claim for damages.
8 Property insurance proceeds accruing to the defendant, or other owner of the seized
9 motor vehicle, shall be paid by the responsible insurance company directly to the clerk of
10 superior court in the county where the motor vehicle was seized. If the motor vehicle is
11 declared a total loss by the insurance company responsible for repairs to the motor
12 vehicle, the clerk of superior court, upon application of the county board of education,
13 shall enter an order that the motor vehicle be released to the insurance company upon
14 payment into the court of all insurance proceeds for damage to the motor vehicle after
15 payment of towing and storage costs and all valid liens. The clerk of superior court shall
16 provide the Division with a certified copy of the order entered pursuant to this subsection,
17 and the Division shall transfer title to the insurance company or to such other person or
18 entity as may be designated by the insurance company. Insurance proceeds paid to the
19 clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S.
20 20-28.5 and, if ordered forfeited by the court, shall be paid to the county school fund. An
21 affected motor vehicle owner or lienholder who objects to any agreed upon settlement
22 under this subsection may file an independent claim with the insurance company for any
23 additional monies believed owed.

24 (i) Expedited Sale of Seized Motor Vehicles in Certain Cases. – In order to avoid
25 additional liability for towing and storage costs pending resolution of the criminal
26 proceedings of the defendant, the county board of education may, after expiration of 90
27 days from the date of seizure, sell any motor vehicle having a fair market value of one
28 thousand five hundred dollars (\$1,500) or less. The county board of education may also
29 sell a motor vehicle, regardless of the fair market value, any time the towing and storage
30 costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the
31 consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection
32 shall take place upon not less than 10 days' prior notice to the motor vehicle owners and
33 lienholders and the proceeds of the sale shall be deposited with the clerk of superior
34 court. If an order of forfeiture is entered by the court, the proceeds held by the clerk shall
35 be distributed as provided in G.S. 20-28.5(b). If the court determines that the motor
36 vehicle is not subject to forfeiture, the clerk shall distribute the proceeds held by the clerk
37 first to the county board of education to pay the sale, towing, and storage costs, to pay
38 outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle
39 owners.

40 (j) Retrieval of Certain Personal Property. – At reasonable times, the entity
41 charged with storing the motor vehicle may permit owners of personal property not
42 affixed to the motor vehicle to retrieve those items from the motor vehicle, provided

1 satisfactory proof of ownership of the motor vehicle or the items of personal property is
2 presented to the storing entity.

3 (k) County Board of Education Right to Appear and Participate in Proceedings. –
4 The attorney for the county board of education shall be given notice of all proceedings
5 regarding offenses involving impaired driving related to a motor vehicle subject to
6 forfeiture. The attorney for the county board of education shall also have the right to
7 appear and to be heard on all issues relating to the seizure, possession, release, forfeiture,
8 sale, and other matters related to the seized vehicle under this section. With the prior
9 consent of the county board of education, the district attorney may delegate to the
10 attorney for the county board of education any or all of the duties of the district attorney
11 under this section. Magistrates, clerks of superior court, and law enforcement officers are
12 authorized and directed to assist county boards of education in obtaining records,
13 including computerized records, of seized motor vehicles, including but not limited to, a
14 register of motor vehicles seized or forfeited pursuant to this section, the names and
15 addresses of the motor vehicle owners, the vehicle identification numbers, the names of
16 lienholders, and the names and addresses of insurance companies and other motor vehicle
17 owners that may have liability for damages to the seized motor vehicle.

18 (l) Payment of Fees Upon Conviction. – If the driver of a motor vehicle seized
19 pursuant to this section is convicted of an offense involving impaired driving, the
20 defendant shall be ordered to pay as restitution to the county board of education, the
21 motor vehicle owner, or the lienholder, the cost paid or owing for the towing, storage,
22 and sale of the motor vehicle to the extent the costs were not covered by the proceeds
23 from the forfeiture and sale of the motor vehicle. The order of payment of costs under
24 this subsection, in addition to being a part of the criminal judgment, shall also constitute a
25 civil judgment in favor of the party to whom the restitution is owed, shall be docketed by
26 the clerk of court as any other civil judgment, and may be collected as any other civil
27 judgment.

28 (m) Trial Priority. – Trials of impaired driving offenses involving forfeitures of
29 motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next
30 court date or within 30 days of the offense, whichever comes first.

31 Once scheduled, the case shall not be continued unless all of the following conditions
32 are met:

33 (1) A written motion for continuance is filed with notice given to the
34 opposing party prior to the motion being heard.

35 (2) The judge makes a finding of a 'compelling reason' for the continuance.

36 (3) The motion and finding are attached to the court case record.

37 Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the
38 judge immediately, or as soon thereafter as feasible, and the judge shall issue the
39 appropriate orders pursuant to G.S. 20-28.2(d).

40 Should a defendant appeal his conviction to superior court, the appeal shall be set
41 down for trial on the next available trial date and the limitations on continuances and
42 requirement for expedited hearing on the forfeiture of the vehicle, set forth above, shall
43 apply."

1 Section 4. G.S. 20-28.4 reads as rewritten:

2 **"§ 20-28.4. Release of impounded motor vehicles by judge.**

3 (a) Release to Innocent Vehicle Owner. – A motor vehicle owner who was not the
4 operator of the motor vehicle at the time of the offense may file a petition in the
5 underlying criminal case with the the court for return of the vehiele clerk of superior
6 court for:

7 (1) Temporary pretrial release of the motor vehicle;

8 (2) Permanent release of the motor vehicle;

9 (3) Payment of any insurance proceeds; or

10 (4) Payment of proceeds of the prior sale of a motor vehicle,

11 pursuant to the provisions of ~~G.S. 20-28.2(e)~~ G.S. 20-28.2(e), 20-28.3(e), 20-28.3(h), or
12 20-28.3(i).

13 (b) Acknowledgment Required. – The motor vehicle owner ~~seeking release~~
14 ~~petitioning~~ under this section ~~or pretrial release under G.S. 20-28.3~~ shall sign an
15 acknowledgment as described in G.S. 20-28.2(a1)(1).

16 (c) Release to Lienholder. – ~~A~~ Upon petition by the lienholder and after 10 days'
17 prior written notice to the district attorney and the county board of education attorney, a
18 ~~district court judge~~ may order a forfeited motor vehicle released to a lienholder if the
19 judge determines, by the greater weight of the evidence, that the lienholder satisfies the
20 criteria as set out in G.S. 20-28.2(f). Lienholders may also petition the court for
21 possession of a seized motor vehicle prior to forfeiture pursuant to the provisions of G.S.
22 20-28.3(e3).

23 (d) Release Upon Conclusion of Trial. – If the driver of a motor vehicle seized
24 pursuant to G.S. 20-28.3:

25 (1) Is subsequently not convicted of ~~either G.S. 20-138.1 or G.S. 20-138.5~~
26 an offense involving impaired driving due to dismissal or a finding of
27 not guilty; or

28 (2) The judge at the sentencing hearing fails to find the grossly aggravating
29 factor described in G.S. 20-179(c)(2),

30 the seized motor vehicle shall be ~~returned~~ released to the motor vehicle ~~owner~~ owner
31 conditioned upon payment of towing and storage costs.

32 ~~If the court finds that probable cause did not exist to seize the motor vehicle, the court~~
33 ~~shall order the vehicle released.~~

34 ~~A determination which results in the return or release of the seized vehicle under this~~
35 ~~section authorizes the driver, vehicle owner, or lienholder to recover towing or storage~~
36 ~~fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees~~
37 ~~recovered pursuant to this subsection shall be paid by the county school board from~~
38 ~~forfeitures paid into the county school fund."~~

39 Section 5. G.S. 20-28.5 reads as rewritten:

40 **"§ 20-28.5. Forfeiture of impounded ~~vehiele~~ motor vehicle or funds.**

41 (a) Sale. – ~~Unless a judge orders the vehicle returned to an innocent party or a~~
42 ~~lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited~~
43 ~~and sold or transferred to the school board in the county where the charges were filed.~~

1 ~~The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall
2 be sold at a public sale conducted in accordance with the provisions of Parts 1 and 2 of
3 Article 29A of Chapter 1 Article 12 of Chapter 160A of the General Statutes Statutes,
4 applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the
5 notice requirements of this subsection, and shall be conducted by the county school board
6 board of education or a person acting on its behalf. In addition to the notice requirements
7 of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale Notice of
8 sale, including the date, time, location, and manner of sale, shall also be given by
9 certified mail, return receipt requested, first-class mail, to all motor vehicle owners at the
10 address shown by the Division's records of the Division and at any other address of the
11 motor vehicle owner as may be found in the criminal file in which the forfeiture was
12 ordered. Notice Written notice of sale shall also be by certified mail, return receipt
13 requested, given to all lienholders on file with the Division. Notice of sale shall be given
14 to the Division in accordance with the procedures established by the Division. Notices
15 required to be given under this subsection shall be mailed at least 14 days prior to the
16 date of sale.

17 (b) Proceeds of Sale. – Proceeds of any sale conducted under this section shall first
18 be applied to the cost of sale and then to satisfy towing and storage liens and the cost of
19 sale costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other
20 existing liens of record that were properly recorded ~~with the Division~~ prior to the date of
21 initial seizure of the vehicle. Any remaining balance shall be paid to the county school
22 fund in the county in which the motor vehicle was ordered forfeited. If there is more than
23 one school board in the county, then the net proceeds of sale shall be distributed in the
24 same manner as fines and other forfeitures. Vehicles sold ~~The sale of a motor vehicle~~
25 pursuant to this section shall be deemed to extinguish all existing liens on the motor
26 vehicle and the motor vehicle shall be transferred free and clear of any liens.

27 (c) Retention of Motor Vehicle. – The county board of education may, at its
28 option, retain any forfeited motor vehicle for its ~~use~~ use upon payment of towing and
29 storage costs. If the motor vehicle is retained, any valid lien of record at the time of the
30 initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of
31 education relieving the motor vehicle owner of all liability for the obligation secured by
32 the motor vehicle. If there is more than one school board in the county, and the motor
33 vehicle is retained by the county board of education, then the fair market value of the
34 motor vehicle, less the costs for towing, storage, and liens paid, shall be used to
35 determine and pay the share due each of the school boards in the same manner as fines
36 and other forfeitures.

37 (d) ~~[Counties with Multiple School Boards.]~~ ~~If there is more than one school~~
38 ~~board in the county, then the fair market value of the vehicle shall be used to determine~~
39 ~~the share due each of the school boards in the same manner as fines and other forfeitures.~~

40 (e) Order of Forfeiture; Appeals. – An order of forfeiture is stayed pending appeal
41 of a conviction for an offense that is the basis for the order. When the conviction of an
42 offense that is the basis for an order of forfeiture is appealed from district court, the issue

1 of forfeiture shall be heard in superior court de novo. Appeal from a final order of
2 forfeiture shall be to the Court of Appeals."

3 Section 6. G.S. 20-28.6 is repealed.

4 Section 7. G.S. 20-28.7 reads as rewritten:

5 **"§ 20-28.7. Responsibility of Division of Motor Vehicles.**

6 The Division shall establish procedures by rule to provide for the orderly seizure,
7 forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2,
8 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6.~~ and 20-28.5."

9 Section 8. Article 2 of Chapter 20 of the General Statutes is amended by
10 adding two new sections to read:

11 **"§ 20-28.8. Reports to the Division.**

12 The clerk of superior court shall report to the Division all information as may be
13 required by the Division concerning the disposition of all motor vehicles seized pursuant
14 to G.S. 20-28.3 or any other statute, including all orders of seizure under G.S. 20-28.3,
15 orders of release under G.S. 20-28.3 and G.S. 20-28.4, and orders of forfeiture under G.S.
16 20-28.2.

17 **"§ 20-28.9. Authority for agency to administer a statewide or regional towing,**
18 **storage, and sales program for driving while impaired vehicles forfeited.**

19 An agency designated by the Governor is authorized to enter into a contract for a
20 statewide service or contracts for regional services to tow, store, maintain, and sell motor
21 vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3
22 shall be subject to contracts entered into pursuant to this section. Contracts shall be let in
23 accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All
24 contracts shall ensure the safety of the motor vehicles while held and any funds arising
25 from the sale of any seized motor vehicle. The contract shall require the contractor to
26 maintain and make available to the agency a computerized up-to-date inventory of all
27 motor vehicles held under the contract, together with an accounting of all accrued
28 charges, the status of the vehicle, and the county school fund to which the proceeds of
29 sale are to be paid."

30 Section 9. G.S. 20-54 reads as rewritten:

31 **"§ 20-54. Authority for refusing registration or certificate of title.**

32 The Division shall refuse registration or issuance of a certificate of title or any transfer
33 of registration upon any of the following grounds:

34 (1) The application contains a false or fraudulent statement, the applicant
35 has failed to furnish required information or reasonable additional
36 information requested by the Division, or the applicant is not entitled to
37 the issuance of a certificate of title or registration of the vehicle under
38 this Article.

39 (2) The vehicle is mechanically unfit or unsafe to be operated or moved
40 upon the highways.

41 (3) The Division has reasonable ground to believe that the vehicle is a
42 stolen or embezzled vehicle, or that the granting of registration or the
43 issuance of a certificate of title would constitute a fraud against the

1 rightful owner or another person who has a valid lien against the
2 vehicle.

3 (4) The registration of the vehicle stands suspended or revoked for any
4 reason as provided in the motor vehicle laws of this State.

5 (5) The required fee has not been paid.

6 (6) The vehicle is not in compliance with the emissions inspection
7 requirements of Part 2 of Article 3A of this Chapter or a civil penalty
8 assessed as a result of the failure of the vehicle to comply with that Part
9 has not been paid.

10 (7) The Division has been notified that the motor vehicle has been seized by
11 a law enforcement officer and is subject to forfeiture pursuant to G.S.
12 20-28.2, et seq., or any other statute."

13 Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is
14 amended by adding a new section to read:

15 "**§ 20-54.1. Forfeiture of right of registration.**

16 (a) Upon receipt of notice of conviction of a violation of an offense involving
17 impaired driving while the person's license is revoked as a result of a prior impaired
18 driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the
19 registration of all motor vehicles registered in the convicted person's name and shall not
20 register a motor vehicle in the convicted person's name until the convicted person's
21 license is restored. Upon receipt of notice of revocation of registration from the Division,
22 the convicted person shall surrender the registration on all motor vehicles registered in
23 the convicted person's name to the Division within 10 days of the date of the notice.

24 (b) Upon receipt of a notice of conviction under subsection (a) of this section, the
25 Division shall revoke the registration of the motor vehicle seized and the owner shall not
26 be allowed to register the motor vehicle seized until the convicted operator's drivers
27 license has been restored. The Division shall not revoke the registration of the owner of
28 the seized motor vehicle if the owner is determined to be an innocent owner. The
29 Division shall only revoke the owner's registration after the owner is given an opportunity
30 for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-
31 28.2. Upon receipt of notice of revocation of registration from the Division, the owner
32 shall surrender the registration on the motor vehicle seized to the Division within 10 days
33 of the date of the notice."

34 Section 11. G.S. 20-55 reads as rewritten:

35 "**§ 20-55. Examination of registration records and index of seized, stolen and**
36 **recovered vehicles.**

37 The Division, upon receiving application for any transfer of registration or for original
38 registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall
39 first check the engine and serial numbers shown in the application with its record of
40 registered motor vehicles, and against the index of seized, stolen and recovered motor
41 vehicles required to be maintained by this Article."

42 Section 12. G.S. 20-114(c) reads as rewritten:

1 "(c) It shall also be the duty of every ~~sheriff of every county of the State and of~~
2 ~~every police or peace officer of the State~~ law enforcement officer to make immediate
3 report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned
4 or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic
5 beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to
6 G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any
7 sheriff, police or peace officer, or by any person, firm or corporation claiming a
8 mechanic's or storage lien, or under judicial proceedings, until notice on a form approved
9 by the Commissioner shall have been given the Commissioner at least 20 days before the
10 date of such sale."

11 Section 13. Part 8 of Article 3 of Chapter 20 of the General Statutes is
12 amended by adding a new section to read:

13 **"§ 20-106.3. Unauthorized operation of a rental vehicle.**

14 It shall be unlawful for any person to operate a rental vehicle without written
15 authorization by the owner of the rental vehicle. The term rental vehicle as used in this
16 section shall mean and include any motor vehicle which is rented or leased to another
17 person by the vehicle owner for a period of not more than 30 days solely for the
18 transportation of the lessee and authorized passengers or the private hauling of the
19 lessee's personal property. A violation of this section shall be a Class 1 misdemeanor."

20 Section 14. G.S. 1-339.4 reads as rewritten:

21 **"§ 1-339.4. Who may hold sale.**

22 An order of sale may authorize the persons designated below to hold the sale:

- 23 (1) In any proceeding, a commissioner specially appointed therefor; or
- 24 (2) In a proceeding to sell property of a decedent, the administrator,
25 executor or collector of such decedent's estate;
- 26 (3) In a proceeding to sell property of a minor, the guardian of such minor's
27 estate;
- 28 (4) In a proceeding to sell property of an incompetent, the guardian or
29 trustee of such incompetent's estate;
- 30 (5) In a proceeding to sell property of an absent or missing person, the
31 administrator, collector, conservator, or guardian of the estate of such
32 absent or missing person;
- 33 (6) In a proceeding to foreclose a deed of trust, the trustee named in the
34 deed of trust;
- 35 (7) In a receivership proceeding, the receiver;
- 36 (8) In a proceeding to sell property of a trust, the trustee;
- 37 (9) ~~In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the~~
38 ~~county school board or a person acting on its behalf."~~

39 Section 15. G.S. 44A-2(d) reads as rewritten:

40 "(d) Any person who repairs, services, tows, or stores motor vehicles in the
41 ordinary course of ~~his~~ the person's business pursuant to an express or implied contract
42 with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle
43 seized pursuant to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges

1 for such repairs, servicing, towing, storing, or for the rental of one or more substitute
2 vehicles provided during the repair, servicing, or storage. This lien shall have priority
3 over perfected and unperfected security interests. Payment for towing and storing a
4 motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2
5 through G.S. 20-28.5."

6 Section 16. G.S. 44A-4(b)(1) reads as rewritten:

7 "(b) Notice and Hearings. –

8 (1) If the property upon which the lien is claimed is a motor vehicle that is
9 required to be registered, the lienor following the expiration of the
10 relevant time period provided by subsection (a) shall give notice to the
11 Division of Motor Vehicles that a lien is asserted and sale is proposed
12 and shall remit to the Division a fee of ten dollars (\$10.00). The
13 Division of Motor Vehicles shall issue notice by registered or certified
14 mail, return receipt requested, ~~within 15 days of receipt of notice from~~
15 ~~the lienor,~~ to the person having legal title to the property, if reasonably
16 ascertainable, to the person with whom the lienor dealt if different, and
17 to each secured party and other person claiming an interest in the
18 property who is actually known to the Division or who can be
19 reasonably ascertained. The notice shall state that a lien has been
20 asserted against specific property and shall identify the lienor, the date
21 that the lien arose, the general nature of the services performed and
22 materials used or sold for which the lien is asserted, the amount of the
23 lien, and that the lienor intends to sell the property in satisfaction of the
24 lien. The notice shall inform the recipient that the recipient has the right
25 to a judicial hearing at which time a determination will be made as to
26 the validity of the lien prior to a sale taking place. The notice shall
27 further state that the recipient has a period of 10 days from the date of
28 receipt in which to notify the Division by registered or certified mail,
29 return receipt requested, that a hearing is desired and that if the recipient
30 wishes to contest the sale of his property pursuant to such lien, the
31 recipient should notify the Division that a hearing is ~~desired and the~~
32 ~~Division shall notify lienor.~~ desired. The notice shall state the required
33 information in simplified terms and shall contain a form whereby the
34 recipient may notify the Division that a hearing is desired by the return
35 of such form to the Division. The Division shall notify the lienor
36 whether such notice is timely received by the Division. In lieu of the
37 notice by the lienor to the Division and the notices issued by the
38 Division described above, the lienor may issue notice on a form
39 approved by the Division pursuant to the notice requirements above. If
40 notice is issued by the lienor, the recipient shall return the form
41 requesting a hearing to the lienor, and not the Division, within 10 days
42 from the date they receive the notice if a judicial hearing is requested.
43 Failure of the recipient to notify the Division or lienor, as specified in

1 the notice, within 10 days of the receipt of such notice that a hearing is
2 desired shall be deemed a waiver of the right to a hearing prior to the
3 sale of the property against which the lien is asserted, ~~the Division shall~~
4 ~~notify the lienor,~~ and the lienor may proceed to enforce the lien by
5 public or private sale as provided in this section and the Division shall
6 transfer title to the property pursuant to such sale. If the Division or
7 lienor, as specified in the notice, is notified within the 10-day period
8 provided above that a hearing is desired prior to sale, the lien may be
9 enforced by sale as provided in this section and the Division will
10 transfer title only pursuant to the order of a court of competent
11 jurisdiction.

12 If the ~~Division notifies the lienor that the~~ registered or certified mail
13 notice has been returned as undeliverable, or if ~~the Division cannot~~
14 ~~ascertain~~ the name of the person having legal title to the vehicle cannot
15 reasonably be ascertained and the fair market value of the vehicle is less
16 than eight hundred dollars (\$800.00), the lienor may institute a special
17 proceeding in the county where the vehicle is being held, for
18 authorization to sell that vehicle. Market value shall be determined by
19 the schedule of values adopted by the Commissioner under G.S. 105-
20 187.3.

21 In such a proceeding a lienor may include more than one vehicle, but
22 the proceeds of the sale of each shall be subject only to valid claims
23 against that vehicle, and any excess proceeds of the sale shall escheat to
24 the State and be paid immediately to the treasurer for disposition
25 pursuant to Chapter 116B of the General Statutes. A vehicle owner or
26 possessor claiming an interest in such proceeds shall have a right of
27 action under G.S. 116B-38.

28 The application to the clerk in such a special proceeding shall
29 contain the notice of sale information set out in subsection (f) hereof. If
30 the application is in proper form the clerk shall enter an order
31 authorizing the sale on a date not less than 14 days therefrom, and the
32 lienor shall cause the application and order to be sent immediately by
33 first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom
34 ~~the Division has mailed~~ notice was mailed pursuant to this subsection.
35 Following the authorized sale the lienor shall file with the clerk a report
36 in the form of an affidavit, stating that the lienor has complied with the
37 public or private sale provisions of G.S. 44A-4, the name, address, and
38 bid of the high bidder or person buying at a private sale, and a statement
39 of the disposition of the sale proceeds. The clerk then shall enter an
40 order directing the Division to transfer title accordingly.

41 If prior to the sale the owner or legal possessor contests the sale or
42 lien in a writing filed with the clerk, the proceeding shall be handled in
43 accordance with G.S. 1-399."

1 Section 17. G.S. 58-71-1 reads as rewritten:

2 **"§ 58-71-1. Definitions.**

3 The following words when used in this Article shall have the following meanings:

- 4 (1) 'Accommodation bondsman' is a natural person who has reached the age
5 of 18 years and is a bona fide resident of this State and who, aside from
6 love and affection and release of the person concerned, receives no
7 consideration for action as surety and who endorses the bail bond after
8 providing satisfactory evidences of ownership, value and marketability
9 of real or personal property to the extent necessary to reasonably satisfy
10 the official taking bond that such real or personal property will in all
11 respects be sufficient to assure that the full principal sum of the bond
12 will be realized in the event of breach of the conditions thereof.
13 "Consideration" as used in this subdivision does not include the legal
14 rights of a surety against a principal by reason of breach of the
15 conditions of a bail bond nor does it include collateral furnished to and
16 securing the surety so long as the value of the surety's rights in the
17 collateral do not exceed the principal's liability to the surety by reason
18 of a breach in the conditions of said bail bond.
- 19 (2) 'Bail bond' shall mean an undertaking by the principal to appear in court
20 as required upon penalty of forfeiting bail to the State in a stated
21 amount; and may include an unsecured appearance bond, a premium-
22 secured appearance bond, an appearance bond secured by a cash deposit
23 of the full amount of the bond, an appearance bond secured by a
24 mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by
25 at least one surety. A bail bond may also include a bond securing the
26 return of a motor vehicle subject to forfeiture in accordance with G.S.
27 20-28.3(e).
- 28 (3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman
29 or an accommodation bondsman as hereinafter defined.
- 30 (4) 'Commissioner' shall mean the Commissioner of Insurance.
- 31 (5) 'Insurer' shall mean any domestic, foreign, or alien surety company
32 which has qualified generally to transact surety business and specifically
33 to transact bail bond business in this State.
- 34 (6) 'Obligor' shall mean a principal or a surety on a bail bond.
- 35 (7) 'Principal' shall mean a defendant or witness obligated to appear in court
36 as required upon penalty of forfeiting bail under a bail ~~bond~~-bond or a
37 person obligated to return a motor vehicle subject to forfeiture in
38 accordance with G.S. 20-28.3(e).
- 39 (8) 'Professional bondsman' shall mean any person who is approved and
40 licensed by the Commissioner and who pledges cash or approved
41 securities with the Commissioner as security for bail bonds written in
42 connection with a judicial proceeding and receives or is promised
43 money or other things of value therefor.

1 (9) 'Runner' shall mean a person employed by a bail bondsman for the
2 purpose of assisting the bail bondsman in presenting the defendant in
3 court when required, or to assist in apprehension and surrender of
4 defendant to the court, or keeping defendant under necessary
5 surveillance, or to execute bonds on behalf of the licensed bondsman
6 when the power of attorney has been duly recorded. "Runner" does not
7 include, however, a duly licensed attorney-at-law or a law-enforcement
8 officer assisting a bondsman.

9 (10) 'Surety' shall mean one who, with the principal, is liable for the amount
10 of the bail bond upon forfeiture of bail.

11 (11) 'Surety bondsman' means any person who is licensed by the
12 Commissioner as a surety bondsman under this Article, is appointed by
13 an insurer by power of attorney to execute or countersign bail bonds for
14 the insurer in connection with judicial proceedings, and receives or is
15 promised consideration for doing so."

16 Section 18. G.S. 58-71-35(a) reads as rewritten:

17 "(a) ~~The Except for bonds issued to secure the return of a motor vehicle subject to~~
18 ~~forfeiture in accordance with G.S. 20-28.3(e), the~~ procedure for forfeiture of bail shall be
19 that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of
20 that Article shall continue in full force and effect."

21 PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

22 Section 19. G.S. 20-16.2(a) reads as rewritten:

23 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
24 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby
25 gives consent to a chemical analysis if charged with an implied-consent offense. The
26 charging officer shall designate the type of chemical analysis to be administered, and it
27 may be administered when the officer has reasonable grounds to believe that the person
28 charged has committed the implied-consent offense.

29 Except as provided in this subsection or subsection (b), before any type of chemical
30 analysis is administered the person charged shall be taken before a chemical analyst
31 authorized to administer a test of a person's breath, who shall inform the person orally
32 and also give the person a notice in writing that:

33 (1) The person has a right to refuse to be tested.

34 (2) Refusal to take any required test or tests will result in an immediate
35 revocation of the person's driving privilege for at least 30 days and an
36 additional 12-month revocation by the Division of Motor Vehicles.

37 (3) The test results, or the fact of the person's refusal, will be admissible in
38 evidence at trial on the offense charged.

39 (4) The person's driving privilege will be revoked immediately for at least
40 30 days if:

41 a. The test reveals an alcohol concentration of 0.08 or more; or

1 b. The person was driving a commercial motor vehicle and the test
2 reveals ~~an~~any alcohol concentration of ~~0.04 or more~~in the person's
3 blood.

4 (5) The person may choose a qualified person to administer a chemical test
5 or tests in addition to any test administered at the direction of the
6 charging officer.

7 (6) The person has the right to call an attorney and select a witness to view
8 for him or her the testing procedures, but the testing may not be delayed
9 for these purposes longer than 30 minutes from the time when the
10 person is notified of his or her rights.

11 If the charging officer or an arresting officer is authorized to administer a chemical
12 analysis of a person's breath, the charging officer or the arresting officer may give the
13 person charged the oral and written notice of rights required by this subsection. This
14 authority applies regardless of the type of chemical analysis designated."

15 Section 20. G.S. 20-16.5(b) reads as rewritten:

16 "**(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~**
17 **~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After~~**
18 **~~Driving a Commercial Vehicle Who Are Charged With Certain Implied Consent~~**
19 **Offenses.** – A person's driver's license is subject to revocation under this section if:

20 (1) A charging officer has reasonable grounds to believe that the person has
21 committed an offense subject to the implied-consent provisions of G.S.
22 20-16.2;

23 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);

24 (3) The charging officer and the chemical analyst comply with the
25 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
26 submission to or procuring a chemical analysis; and

27 (4) The person:

28 a. Willfully refuses to submit to the chemical analysis;

29 b. Has an alcohol concentration of 0.08 or more within a relevant time
30 after the driving; or

31 c. Has ~~an~~any alcohol concentration of ~~0.04 or more~~in the person's
32 blood at any relevant time after the driving of a commercial vehicle."

33 Section 21. G.S. 20-16.5(b1) reads as rewritten:

34 "**(b1) Precharge Test Results as Basis for Revocation.** – Notwithstanding the
35 provisions of subsection (b), a person's driver's license is subject to revocation under this
36 section if:

37 (1) ~~He~~The person requests a precharge chemical analysis pursuant to G.S.
38 20-16.2(i); and

39 (2) ~~He~~The person has:

40 a. An alcohol concentration of 0.08 or more at any relevant time after
41 driving; or

42 b. ~~An~~Any alcohol concentration of ~~0.04 or more~~in his blood at any
43 relevant time after driving a commercial motor vehicle; and

1 (3) ~~He~~ The person is charged with an implied-consent offense."

2 Section 22. G.S. 20-17(a) reads as rewritten:

3 "(a) The Division shall forthwith revoke the license of any driver upon receiving a
4 record of the driver's conviction for any of the following offenses:

5 (1) Manslaughter (or negligent homicide) resulting from the operation of a
6 motor vehicle.

7 (2) Either of the following impaired driving offenses:

8 a. Impaired driving under G.S. 20-138.1.

9 b. Impaired driving under G.S. ~~20-138.2 when the person convicted did~~
10 ~~not take a chemical test at the time of the offense or the person took a~~
11 ~~chemical test at the time of the offense and the test revealed that the~~
12 ~~person had an alcohol concentration at any relevant time after driving of~~
13 ~~less than 0.04 or of 0.08 or more.~~ 20-138.2.

14 (3) Any felony in the commission of which a motor vehicle is used.

15 (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).

16 (5) Perjury or the making of a false affidavit or statement under oath to the
17 Division under this Article or under any other law relating to the
18 ownership of motor vehicles.

19 (6) Conviction upon two charges of reckless driving committed within a
20 period of 12 months.

21 (7) Conviction upon one charge of reckless driving while engaged in the
22 illegal transportation of intoxicants for the purpose of sale.

23 (8) Conviction of using a false or fictitious name or giving a false or
24 fictitious address in any application for a drivers license, or learner's
25 permit, or any renewal or duplicate thereof, or knowingly making a false
26 statement or knowingly concealing a material fact or otherwise
27 committing a fraud in any such application or procuring or knowingly
28 permitting or allowing another to commit any of the foregoing acts.

29 (9) Death by vehicle as defined in G.S. 20-141.4.

30 (10) Repealed by Session Laws 1997-443, s. 19.26(b).

31 (11) Conviction of assault with a motor vehicle.

32 (12) A second or subsequent conviction of transporting an open container of
33 alcoholic beverage under G.S. 20-138.7."

34 Section 23. G.S. 20-17.4 reads as rewritten:

35 **"§ 20-17.4. Disqualification to drive a commercial motor vehicle.**

36 (a) One Year. – Any of the following disqualifies a person from driving a
37 commercial motor vehicle for one year:

38 (1) A first conviction of G.S. 20-138.1, driving while impaired, that
39 occurred while the person was driving a commercial motor vehicle.

40 ~~(2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle~~
41 ~~while impaired.~~

42 (3) A first conviction of G.S. 20-166, hit and run, involving a commercial
43 motor vehicle driven by the person.

1 (4) A first conviction of a felony in the commission of which a commercial
2 motor vehicle was used.

3 (5) Refusal to submit to a chemical test when charged with an implied-
4 consent offense, as defined in G.S. 20-16.2, that occurred while the
5 person was driving a commercial motor vehicle.

6 (b) Modified Life. – A person who has been disqualified from driving a
7 commercial motor vehicle ~~for~~ for either of the following:

8 (1) a A first conviction or refusal described in subsection (a) who, as the result
9 of a separate incident, is subsequently convicted of an offense or commits an act
10 requiring disqualification under subsection (a)-(a); or

11 (2) A first conviction of G.S. 20-138.2 is disqualified for life. The Division
12 may adopt guidelines, including conditions, under which a
13 disqualification for life under this subsection may be reduced to 10
14 years.

15 (b1) Life Without Reduction. – A person is disqualified from driving a commercial
16 motor vehicle for life, without the possibility of reinstatement after 10 years, if that
17 person is convicted of a second or subsequent violation of G.S. 20-138.2 or if the person
18 refuses to submit to a chemical test a second time when charged with an implied-consent
19 offense, as defined in G.S. 20-16.2, that occurred while the person was driving a
20 commercial motor vehicle.

21 (c) Life. – A person is disqualified from driving a commercial motor vehicle for
22 life if that person uses a commercial motor vehicle in the commission of any felony
23 involving the manufacture, distribution, or dispensing of a controlled substance, or
24 possession with intent to manufacture, distribute, or dispense a controlled substance.

25 (d) Less Than a Year. – A person is disqualified from driving a commercial motor
26 vehicle for 60 days if that person is convicted of two serious traffic violations, or 120
27 days if convicted of three or more serious traffic violations, committed in a commercial
28 motor vehicle arising from separate incidents occurring within a three-year period.

29 (e) Three Years. – A person is disqualified from driving a commercial motor
30 vehicle for three years if that person is convicted of an offense or commits an act
31 requiring disqualification under subsection (a) and the offense or act occurred while the
32 person was transporting a hazardous material that required the motor vehicle driven to be
33 placarded.

34 (f) Revocation Period. – A person is disqualified from driving a commercial motor
35 vehicle for the period during which the person's regular or commercial drivers license is
36 revoked."

37 Section 24. G.S. 20-36 reads as rewritten:

38 "**§ 20-36. Ten-year-old convictions not considered.**

39 No Except for a second or subsequent conviction for violating G.S. 20-138.2 or a
40 second failure to submit to a chemical test when charged with an implied-consent
41 offense, as defined in G.S. 20-16.2, that occurred while the person was driving a
42 commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall
43 be considered by the Division in determining whether any person's driving privilege shall

1 be suspended or revoked or in determining the appropriate period of suspension or
2 revocation after 10 years has elapsed from the date of ~~such that~~ conviction."

3 Section 25. G.S. 20-138.2(a) reads as rewritten:

4 "(a) Offense. – A person commits the offense of impaired driving in a commercial
5 motor vehicle if ~~he the person~~ drives a commercial motor vehicle upon any highway, any
6 street, or any public vehicular area within the State:

7 (1) While under the influence of an impairing substance; or

8 (2) After having consumed sufficient alcohol that ~~he the person~~ has, at any
9 relevant time after the driving, ~~an any~~ alcohol concentration ~~of 0.04 or~~
10 ~~more in his blood.~~"

11 PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND
12 OPERATORS OF CHILD CARE VEHICLES.

13 Section 26. G.S. 20-4.01(27) reads as rewritten:

14 "(27) Passenger Vehicles. –

15 a. Excursion passenger vehicles. – Vehicles transporting
16 persons on sight-seeing or travel tours.

17 b. For hire passenger vehicles. – Vehicles transporting
18 persons for compensation. This classification shall not
19 include vehicles operated as ambulances; vehicles
20 operated by the owner where the costs of operation are
21 shared by the passengers; vehicles operated pursuant to a
22 ridesharing arrangement as defined in G.S. 136-44.21;
23 vehicles transporting students for the public school system
24 under contract with the State Board of Education or
25 vehicles leased to the United States of America or any of
26 its agencies on a nonprofit basis; or vehicles used for
27 human service or volunteer transportation.

28 c. Common carriers of passengers. – Vehicles operated
29 under a certificate of authority issued by the Utilities
30 Commission for operation on the highways of this State
31 between fixed termini or over a regular route for the
32 transportation of persons for compensation.

33 c1. Child care vehicles. – Vehicles under the direction and
34 control of a child care facility, as defined in G.S. 110-
35 86(3), and operated by an owner or employee of the child
36 care facility for the purpose of transporting children to and
37 from the facility, or to and from a place for participation
38 in an event or activity.

39 d. Motorcycles. – Vehicles having a saddle for the use of the
40 rider and designed to travel on not more than three wheels
41 in contact with the ground, including motor scooters and
42 motor-driven bicycles, but excluding tractors and utility
43 vehicles equipped with an additional form of device

1 designed to transport property, three-wheeled vehicles
2 while being used by law-enforcement agencies and
3 mopeds as defined in subdivision d1 of this subsection.

4 d1. Moped. – A vehicle that has two or three wheels, no
5 external shifting device, and a motor that does not exceed
6 50 cubic centimeters piston displacement and cannot
7 propel the vehicle at a speed greater than 20 miles per
8 hour on a level surface.

9 d2. Motor home or house car. – A vehicular unit, designed to
10 provide temporary living quarters, built into as an integral
11 part, or permanently attached to, a self-propelled motor
12 vehicle chassis or van. The vehicle must provide at least
13 four of the following facilities: cooking, refrigeration or
14 icebox, self-contained toilet, heating or air conditioning, a
15 portable water supply system including a faucet and sink,
16 separate 110-125 volt electrical power supply, or an LP
17 gas supply.

18 d3. School activity bus. – A vehicle, generally painted a
19 different color from a school bus, whose primary purpose
20 is to transport school students and others to or from a
21 place for participation in an event other than regular
22 classroom work. The term includes a public, private, or
23 parochial vehicle that meets this description.

24 d4. School bus. – A vehicle whose primary purpose is to
25 transport school students over an established route to and
26 from school for the regularly scheduled school day, that is
27 equipped with alternately flashing red lights on the front
28 and rear and a mechanical stop signal, and that bears the
29 words "School Bus" on the front and rear in letters at least
30 8 inches in height. The term includes a public, private, or
31 parochial vehicle that meets this description.

32 e. U-drive-it passenger vehicles. – Vehicles rented or leased
33 to be operated by the lessee. This shall not include
34 vehicles of nine-passenger capacity or less which are
35 leased for a term of one year or more to the same person
36 or vehicles leased or rented to public school authorities for
37 driver-training instruction.

38 f. Ambulances. – Vehicles equipped for transporting
39 wounded, injured, or sick persons.

40 g. Private passenger vehicles. – All other passenger vehicles
41 not included in the above definitions."

42 Section 27. G.S. 20-16.2(a) reads as rewritten:

1 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
2 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby
3 gives consent to a chemical analysis if charged with an implied-consent offense. The
4 charging officer shall designate the type of chemical analysis to be administered, and it
5 may be administered when the officer has reasonable grounds to believe that the person
6 charged has committed the implied-consent offense.

7 Except as provided in this subsection or subsection (b), before any type of chemical
8 analysis is administered the person charged shall be taken before a chemical analyst
9 authorized to administer a test of a person's breath, who shall inform the person orally
10 and also give the person a notice in writing that:

- 11 (1) The person has a right to refuse to be tested.
- 12 (2) Refusal to take any required test or tests will result in an immediate
13 revocation of the person's driving privilege for at least 30 days and an
14 additional 12-month revocation by the Division of Motor Vehicles.
- 15 (3) The test results, or the fact of the person's refusal, will be admissible in
16 evidence at trial on the offense charged.
- 17 (4) The person's driving privilege will be revoked immediately for at least
18 30 days if any of the following occur:
 - 19 a. The test reveals an alcohol concentration of 0.08 or ~~more~~; or more.
 - 20 b. The person was driving a commercial motor vehicle and the test
21 reveals an alcohol concentration of 0.04 or more.
 - 22 c. The person was driving a school bus, a school activity bus, or a child
23 care vehicle while transporting children and the test reveals any alcohol
24 concentration.
- 25 (5) The person may choose a qualified person to administer a chemical test
26 or tests in addition to any test administered at the direction of the
27 charging officer.
- 28 (6) The person has the right to call an attorney and select a witness to view
29 for him or her the testing procedures, but the testing may not be delayed
30 for these purposes longer than 30 minutes from the time when the
31 person is notified of his or her rights.

32 If the charging officer or an arresting officer is authorized to administer a chemical
33 analysis of a person's breath, the charging officer or the arresting officer may give the
34 person charged the oral and written notice of rights required by this subsection. This
35 authority applies regardless of the type of chemical analysis designated."

36 Section 28. G.S. 20-16.5(b) reads as rewritten:

37 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
38 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After~~
39 ~~Driving a Commercial Vehicle Who Are Charged With Certain Implied Consent~~
40 Offenses. – A person's driver's license is subject to revocation under this section if:

- 41 (1) A charging officer has reasonable grounds to believe that the person has
42 committed an offense subject to the implied-consent provisions of G.S.
43 20-16.2;

- 1 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
2 (3) The charging officer and the chemical analyst comply with the
3 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
4 submission to or procuring a chemical analysis; and
5 (4) The person:
6 a. Willfully refuses to submit to the chemical analysis;
7 b. Has an alcohol concentration of 0.08 or more within a relevant time
8 after the driving; ~~or~~
9 c. Has an alcohol concentration of 0.04 or more at any relevant time
10 after the driving of a commercial ~~vehicle~~-vehicle; or
11 d. Has any alcohol concentration in the person's blood at any relevant
12 time after transporting children in a school bus, a school activity bus, or
13 a child care vehicle."

14 Section 29. G.S. 20-16.5(b1) reads as rewritten:

15 "(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the
16 provisions of subsection (b), a person's driver's license is subject to revocation under this
17 section if:

- 18 (1) ~~He~~The person requests a precharge chemical analysis pursuant to G.S.
19 20-16.2(i); and
20 (2) ~~He~~The person has:
21 a. An alcohol concentration of 0.08 or more at any relevant time after
22 driving; ~~or~~
23 b. An alcohol concentration of 0.04 or more at any relevant time after
24 driving a commercial motor ~~vehicle~~; ~~and~~-vehicle; or
25 c. Any alcohol concentration in his blood at any relevant time after
26 transporting children in a school bus, a school activity bus, or a child
27 care vehicle; and
28 (3) ~~He~~The person is charged with an implied-consent offense."

29 Section 30. G.S. 20-138.1(a) reads as rewritten:

30 "(a) Offense. – A person commits the offense of impaired driving if ~~he~~the person
31 drives any vehicle upon any highway, any street, or any public vehicular area within this
32 State:

- 33 (1) While under the influence of an impairing substance; or
34 (2) After having consumed sufficient alcohol that ~~he~~the person has, at any
35 relevant time after the driving, an alcohol concentration of 0.08 or ~~more~~-
36 more; or
37 (3) After having consumed sufficient alcohol that the person has, at any
38 relevant time after the driving of a school bus, a school activity bus, or a
39 child care vehicle transporting any children, any alcohol concentration
40 in his blood."

41 PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21
42 YEARS OF AGE.

43 Section 31. G.S. 20-16.2(a) reads as rewritten:

1 "(a) Basis for Charging Officer to Require Chemical Analysis; Notification of
2 Rights. – Any person who drives a vehicle on a highway or public vehicular area thereby
3 gives consent to a chemical analysis if charged with an implied-consent offense. The
4 charging officer shall designate the type of chemical analysis to be administered, and it
5 may be administered when the officer has reasonable grounds to believe that the person
6 charged has committed the implied-consent offense.

7 Except as provided in this subsection or subsection (b), before any type of chemical
8 analysis is administered the person charged shall be taken before a chemical analyst
9 authorized to administer a test of a person's breath, who shall inform the person orally
10 and also give the person a notice in writing that:

- 11 (1) The person has a right to refuse to be tested.
- 12 (2) Refusal to take any required test or tests will result in an immediate
13 revocation of the person's driving privilege for at least 30 days and an
14 additional 12-month revocation by the Division of Motor Vehicles.
- 15 (3) The test results, or the fact of the person's refusal, will be admissible in
16 evidence at trial on the offense charged.
- 17 (4) The person's driving privilege will be revoked immediately for at least
18 30 days if:
 - 19 a. The test reveals an alcohol concentration of 0.08 or more; ~~or~~
 - 20 b. The person was driving a commercial motor vehicle and the test
21 reveals an alcohol concentration of 0.04 or ~~more~~ more; ~~or~~
 - 22 c. The person is under 21 years of age and the test reveals any blood
23 alcohol concentration in the person's blood."

24 Section 32. G.S. 20-16.5(b) reads as rewritten:

25 "(b) Revocations for Persons Who Refuse Chemical Analyses or ~~Have Alcohol~~
26 ~~Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After~~
27 ~~Driving a Commercial Vehicle Who Are Charged With Certain Implied Consent~~
28 Offenses. – A person's driver's license is subject to revocation under this section if:

- 29 (1) A charging officer has reasonable grounds to believe that the person has
30 committed an offense subject to the implied-consent provisions of G.S.
31 20-16.2;
- 32 (2) The person is charged with that offense as provided in G.S. 20-16.2(a);
- 33 (3) The charging officer and the chemical analyst comply with the
34 procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's
35 submission to or procuring a chemical analysis; and
- 36 (4) The person:
 - 37 a. Willfully refuses to submit to the chemical analysis;
 - 38 b. Has an alcohol concentration of 0.08 or more within a relevant time
39 after the driving; ~~or~~
 - 40 c. Has an alcohol concentration of 0.04 or more at any relevant time
41 after the driving of a commercial ~~vehicle~~ vehicle; ~~or~~
 - 42 d. Has any alcohol concentration in the person's blood at any relevant
43 time after the driving and the person is under 21 years of age."

1 Section 33. G.S. 20-16.5(b1) reads as rewritten:

2 "(b1) Precharge Test Results as Basis for Revocation. – Notwithstanding the
3 provisions of subsection (b), a person's driver's license is subject to revocation under this
4 section if:

5 (1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S.
6 20-16.2(i); and

7 (2) ~~He~~ The person has:

8 a. An alcohol concentration of 0.08 or more at any relevant time after
9 driving; ~~or~~

10 b. An alcohol concentration of 0.04 or more at any relevant time after
11 driving a commercial motor vehicle; ~~and~~ or

12 c. Any alcohol concentration in the person's blood at any relevant time
13 after driving and he is under 21 years of age; and

14 (3) ~~He~~ The person is charged with an implied-consent offense."

15 PART V. INCREASE PUNISHMENT FOR 19 OR 20 YEAR OLD PURCHASE OR
16 POSSESSION OF ALCOHOLIC BEVERAGES.

17 Section 34. G.S. 18B-302(i) is repealed.

18 Section 35. G.S. 15A-146(a) reads as rewritten:

19 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or is
20 was charged with an infraction under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to
21 December 1, 1998, and the charge is dismissed, or a finding of not guilty or not
22 responsible is entered, that person may apply to the court of the county where the charge
23 was brought for an order to expunge from all official records any entries relating to his
24 apprehension or trial. The court shall hold a hearing on the application and, upon finding
25 that the person had not previously received an expungement and that the person had not
26 previously been convicted of any felony under the laws of the United States, this State, or
27 any other state, the court shall order the expunction. No person as to whom such an order
28 has been entered shall be held thereafter under any provision of any law to be guilty of
29 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry
30 made for any purpose, by reason of his failure to recite or acknowledge any expunged
31 entries concerning apprehension or trial."

32 PART VI. EFFECTIVE DATE.

33 Section 36. Parts I of this act becomes effective October 1, 1998 and applies to
34 offenses committed on or after that date. Parts II, III, IV, and V of this act become
35 effective December 1, 1998 and apply to offenses committed on or after that date. The
36 provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of the
37 act shall also apply to vehicles held on or after the effective date as a result of seizure that
38 occurred before, on, or after that date.